

*Leo M. Frank Again Loses in U. S.
Supreme Court*

**HOLMES
EXPRESSES
DOUBT THAT HE
WAS
GIVEN A
FAIR TRIAL**

Second Justice of
Supreme

Court of United
States Re-

fuses to issue Writ of
Error

in Noted Case

SPARK OF HOPE IS
SEEN

BY PRISONER'S
ATTORNEY

Justice Holmes' Doubt
of Fair

Trial May Swerve Tide of Opinion Which May Result in Executive Clemency

WASHINGTON, Nov. 26.—A ray of hope has appeared for Leo M. Frank in denying an Application today for a Writ of Error. Justice Holmes, of the Supreme Court, said that, on the Statement of Facts before him, he was of the opinion that the prisoner had not had a fair trial because there had apparently been a denial of due process of law.

He referred to the suggestion by the trial Judge of the presence of a hostile crowd in the Court room, which threatened violence in Case a verdict of not guilty came in. But Justice Holmes insisted that the question was one which had been concluded by the Supreme Court of Georgia. If that tribunal found there had been due process, then there was nothing for the United States Supreme Court to do.

The only issue about Justice Holmes, he said, was whether the prisoner was denied his Constitutional rights by being asked to leave the Court Room while the verdict was being read, and

Justice Holmes held, as did Justice Lamar, that this was not an Error.

But the admission of Justice Holmes, that there had been a denial of due process of law, it is thought by his Attorney, will swerve the tide of opinion to the prisoner and may lead to clemency from the Governor and the Board of Pardons if efforts for a Writ of Error fail.

Applications for a Writ of Error will be made to the full Bench of the Supreme Court on Monday.

TEXT OF OPINION.

Attorney Harry Alexander said Today:

“Frank is an innocent man. I make this statement on my personal and professional responsibility.”

The following is the text of the opinion of Justice Holmes rendered yesterday denying the Writ of Error which was not made public until today:

‘Opinion of Mr. Justice Holmes.’

“Frank vs. State of Georgia, Application for a Writ of Error.”

“I understand that I am to assume that the allegations of fact in the motion to set aside are true. On those facts, I very seriously doubt if the petitioner has had due process of law—not on the ground of his absence when the verdict was rendered so much as because of the trial taking place in the presence of a hostile demonstration and seemingly dangerous crowd, thought by the presiding Judge to be ready for violence unless a verdict of guilty was rendered. I should not feel prepared to deny a Writ of Error if I did not consider that I was bound by the decision of the Supreme Court of Georgia that the motion to set aside came too late, and even if I thought that the suggestion of waiver was not enough to meet the Constitutional question and the right to bring the Case here.”

“I understand from the headnote and the opinion that the Case was finished when the previous motion for a new trial was denied by the Supreme Court and as Cases must be ended at some time, that apart from any question of waiver, the second motion came too late.”

“I think I am bound by this decision, even if it reverses a long line of Cases, and the Counsel for the petitioner were misled to his detriment

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**FRANK LOSES
AGAIN;
HOLMES
REFUSES TO
CERTIFY HIS
WRIT**

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which I do not intimate to be my view of the Case. I have the impression that there is a Case in which the ground that I rely on

as showing want of due process of law was rejected by the Court with my dissent, but I have not interrupted discussion with Counsel to try to find it, if it exists.

“O. W. HOLMES,”

“Justice Supreme Court of the United States.”

FACTS IN CASE.

The following is the Statement of Facts made by Frank's Attorneys on which Justice Holmes acted:

“Grounds of motion referred to in opinion of Mr. Justice Holmes, the Facts of which were officially certified to be true by the presiding Judge, L. S. Roan.”

“7. Because that fair and impartial trial was not accorded defendant which is guaranteed to him by the Constitution of the United States as contained in the fourteenth amendment to said Constitution, to wit: ‘Nor shall any State deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws.’”

“In support of this ground, movant alleges that the Court room wherein this trial was held had a number of windows on the Pryor Street Side looking out on a public Street of Atlanta and furnishing access to any noises that might occur upon the Street, that there is an open alleyway running from Pryor Street on the Side of the Courthouse and there are windows looking out from the Courtroom into this alley and that crowds collected therein, and any noises in this alley could be heard in the Court Room, that these crowds were boisterous crowds of several hundred and that on the last day of the trial after the Case had been submitted to the Jury at large, and people were standing in the street in front of the Court House and as the Solicitor General came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the Street into a building wherein his office was located.

“That this crowd did not wholly disperse during the interval between the giving of the Case to the Jury and the time when the Jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter Streets, that several times during the trial the crowd in the Court Room, and outside of the Court Room, which was audible both to the Court and the Jury, would applaud when the State scored a point.”

“A large crowd of people standing on the outside cheering, shouting and hurraing and the crowd within the Court Room signifying their feeling by applause and other demonstrations, and on the trial, and in the presence of the Jury, the trial Judge in Open Court conferred with the chief of Police of Atlanta and the Colonel of the Fifth Georgia Regiment stationed in Atlanta, which had the natural effect of intimidating the Jury and so influencing them as to make impossible a fair and impartial consideration of Defendant’s Case.”

“Indeed such demonstrations finally actuated the Court in making the request of defendant’s Counsel, Messrs. Rosser and Arnold, as detailed in paragraph 3 of the motion to have defendant and the Counsel themselves absent at the time the verdict was received in open Court, because the Judge apprehended violence to the defendant and his Counsel, and the apprehension of such violence naturally saturated the minds of the Jury so as to deprive this defendant of a fair and impartial consideration of his Case, which the Constitution of the United States in the fourteenth amendment hereinbefore referred to, entitled him to.”

“On Saturday, August 23, 1913, previous to the rendering of the verdict on August 25, the entire public press appealed to the trial Judge to adjourn Court from Saturday to Monday, owing to the great public excitement, and the Court adjourned from Saturday, 12 o’clock p. m., to Monday morning, because he felt it unwise to continue the Case that day, owing to the great public excitement, and on Monday morning the public excitement had not subsided and was as intense as it was on Saturday previous,

and when it was announced that the Jury had reached verdict the trial Judge went to the Court Room and found it crowded with spectators, and fearing violence in the Court Room, the trial Judge cleared it of spectators and the Jury was brought in for the purpose of delivering their verdict.”

“When the verdict of guilty was announced, a signal was given to the crowd on the outside to that effect. The large crowd of people standing on the outside cheered and shouted as the Jury was beginning to be polled and before more than one juror had been polled the noise was so loud and confusion so great that the further polling of the Jury had to be stopped so as to restore order, and so great was the noise and cheering and confusion from without that it was difficult for the Court to hear the responses of the jurors as they were being polled, though the Court was only ten feet distant from the Jury.”

“All of this occurred during the involuntary absence of this defendant, he being at the time in the custody of law and incarcerated in the Fulton jail, his absence from the Court Room having been requested by the Court on account of fear of violence to said defendant as hereinbefore recited.”

LAMAR’S OPINION.

Mr. Alexander today made public the text of Justice Lamar’s opinion on Monday denying the Writ:

“Opinion of Mr. Justice Lamar, Leo M. Frank vs. State of Georgia. Motion to set aside verdict:”

“The record discloses that on August 25, 1913, Frank was found guilty of murder by a Jury in the Superior Court of Fulton County, Georgia, he, with the consent of his Counsel, being absent from the Court Room when the verdict was rendered. At the same term he made a motion for a new trial, in which the fact of his absence was mentioned, though it was not made a ground of the motion. A new trial was refused, and the Case taken to the Supreme Court of Georgia, where the Judgment was affirmed.”

“Thereafter, on April 16, 1914, and at a subsequent term of the Superior Court, Frank made a motion to set aside the verdict. The order denying the same was affirmed by the State Supreme Court, and thereupon this Application for a Writ of Error was made.”

WHAT GEORGIA COURT HELD.

“In its opinion in this Case the Supreme Court of Georgia, among other things, held:”

“First. That under the due process clause of the fourteenth amendment to the Constitution of the United States, Frank was entitled to be present in Court at every stage of the trial, including the time when the Jury returned their verdict.”

“Second. That under the laws of Georgia and the practice of its Courts a motion for a new trial is proper method by which to attack a verdict rendered in the prisoner’s absence.”

“Three. That when that method of procedure is adopted the defendant must set out in the motion for a new trial all known grounds of objection to the verdict, including the fact that he was absent when it was rendered.”

“Fourth. That having elected to make a motion for a new trial and the Judgment denying the same having been affirmed by the Supreme Court the Defendant could not thereafter make a motion to set aside the verdict on the ground that he had been absent from the Court Room when the verdict was rendered.”

STATE LAWS.

“The laws of the several States fix the method in which and the time at which to attack verdicts because of anything occurring during the progress of the trial, including disorderly conduct of the crowd in and out of the Court Room and the fact that the defendant was not present when the verdict was rendered. It is for the States to determine whether a verdict rendered in the absence of the defendant can be attacked by a motion to set aside the verdict or by motion for a new trial, or both. The laws of

the States also determine whether the denial of one of these motions will prevent the defendant from subsequently making the other. The decision of the Supreme Court of Georgia in this Case holds that under the laws of that State where a motion for a new trial was made and denied, the defendant could not thereafter make a motion to set aside the verdict on the ground that he was not present when it was returned by the Jury. That ruling involves a matter of State practice and presents no Federal question. The Writ of Error is therefore denied.”

“Joseph R. Lamar, associate Justice Supreme Court, of the United States.”
